STATE OF MICHIGAN

COURT OF APPEALS

EUNICE ROXANNE GRICE,

Plaintiff-Appellant,

v

KIM HARROLD,

Defendant-Appellee.

UNPUBLISHED
January 27, 1998

No. 196069
Washtenaw Circuit Court
LC No. 94-002321-DZ

Before: Neff, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right a June 18, 1996, order and opinion issued by Washtenaw Circuit Court granting defendant's motion to enforce a 1984 Texas divorce decree awarding defendant primary custody of Sheridan Nicole Harrold (d/o/b 08/08/81). We affirm.

This case involves a custody dispute over a minor child who was born to defendant and Joe Harrold in 1981 in the State of Texas. When the child was three years old, defendant and Harrold divorced, defendant received full custody per a 1984 Texas divorce decree, and Harrold relocated to Michigan, where he married plaintiff in October 1989. The child remained in Texas with defendant until June 1990, at which time defendant voluntarily sent her to Michigan to live temporarily with plaintiff and Harrold.

Plaintiff and Harrold separated, and Harrold returned to Texas, leaving the child in plaintiff's care. On March 22, 1992, the Washtenaw Circuit Court entered a divorce judgment, in which it awarded plaintiff "possession" or custody of defendant's and Harrold's minor child. Defendant received no notice of the proceedings, and after a lengthy attempt to regain custody herself, defendant filed a motion with the lower court in January 1996, requesting that her 1984 Texas divorce decree be enforced and that her child be returned to her custody.

Defendant argued, among other things, that the lower court lacked jurisdiction over the child and violated the Uniform Child Custody Jurisdiction Act (UCCJA), MCL 600.651 *et seq.*; MSA 27A.651 *et seq.*, when it intervened and unilaterally modified her custodial rights under the Texas decree. Plaintiff, on the other hand, requested an evidentiary hearing or a custody trial to determine

which placement would be in the child's best interest. The lower court agreed that it had previously violated the UCCJA when it awarded plaintiff custody, and ordered that the child be returned to defendant. We agree with that decision and order.

Under the UCCJA, when a child custody dispute is presented, the court must go through a multi-step process in determining whether to exercise jurisdiction. *Moore v Moore*, 186 Mich App 220, 223; 463 NW2d 230 (1990). First, the court must ascertain whether it has jurisdiction over the case in accordance with § 653 of the UCCJA, which states as follows:

> (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree or judgment if any of the following exist:
>
> (a) This state is the home state of the child at the time of commencement of the proceeding or had been the child's home state within 6 months before the commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state.
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> (b) It is in the best interest of the child that a court of this state assume jurisdiction because the child and his parents, or the child and at least 1 contestant, have a significant connection with this state and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.
>
> (c) The child is physically present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.
>
> (d) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with subdivisions (a), (b), or (c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child and it is in the best interest of the child that this court assume jurisdiction.
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> (2) Except under subsection (1)(c) and (d), the physical presence in this state of the child or of the child and 1 of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.
>
> (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody. [MCL 600.653; MSA 27A.653.]

For purposes of § 653(1)(a), "home state" is defined in part as "the state in which the child immediately preceeding the time involved lived with his or her parents, a parent, or a person acting as

parent, for at least 6 consecutive months." MCL 600.652(e); MSA 27A.652(e). In the present case, the record establishes that the child had been present in Michigan, living with plaintiff and attending Michigan schools, for over a year when plaintiff filed for a divorce in Washtenaw County and requested custody. Given these circumstances, we find that Michigan was the child's "home state" at the time plaintiff presented the custody issue to the lower court. See, *e.g.*, *Johnson v Keene*, 164 Mich App 436, 441-442; 417 NW2d 524 (1987). Hence, presuming that plaintiff had standing to sue for custody (an issue not decided herein), the courts of this state had jurisdiction to consider the custody dispute under § 653 of the UCCJA. Our inquiry, however, does not stop there.

We must now look at another provision of the UCCJA which limits the authority of one state to exercise its jurisdiction and modify the custody decrees of a sister state. *Johnson*, *supra* at 442. MCL 600.664(1); MSA 27A.664(1) provides:

> If a court of another state has made a custody decree or judgment, a court of this state shall not modify that decree or judgment unless it appears to the court of this state that the court which rendered the decree or judgment does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with sections 651 to 673 or has declined to assume jurisdiction to modify the decree or judgment and the court of this state has jurisdiction.

In 1984, the State of Texas assumed jurisdiction over the child and issued primary physical and legal custody to defendant, and ordered Harrold to pay child support until the child reached the age of eighteen, or was otherwise emancipated. In 1992, the lower court effectively modified that arrangement by awarding plaintiff custody of the child until she reached the age of eighteen, or until further order of the court. According to § 664(1) (cited above), this modification by the lower court would be proper only if Texas no longer had jurisdiction or declined to exercise it. We note that the lower court made no such determination, and conclude that it is at that point that the court erred in proceeding with the custody issue.

Returning to the prerequisites for jurisdiction enumerated in § 653(1), we find that Texas would clearly have jurisdiction to make a child custody determination concerning this child under subsection (b). Under that subsection, "if the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction." *Bivins v Bivins*, 146 Mich App 223, 230; 379 NW2d 431 (1985). Here, the record reveals that before moving to Michigan in June 1990, at the age of nine, the child had resided in Texas since her birth, her first three years being spent with both defendant and Harrold. Moreover, at the time plaintiff filed for a divorce from Harrold in September 1991, Harrold had already returned to Texas, thus placing both biological parents in Texas.

Accordingly, we find that the child and her parents have a "significant connection" to Texas and there is available in that state "substantial evidence concerning the child's present or future care, protection, training, and personal relationships." MCL 600.653(1)(b); MSA 27A.653(1)(b). There is also no evidence that Texas ever refused to assume its continued jurisdictional power to modify its original custody order. Consequently, although the lower court had, at a minimum, concurrent

jurisdiction over the custody dispute, we agree that it erred in exercising that jurisdiction, as part of the default judgment of divorce, in the face of the otherwise valid and enforceable Texas decree.

Accordingly, regardless of the reasons advanced by the court below, we conclude that the Washtenaw Circuit Court correctly determined that it had previously erred in entering its custody award in plaintiff's favor, and we affirm its decision to enforce the 1984 Texas decree.

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ William B. Murphy